

Memorandum 2020-39

**Statutes Made Obsolete by Trial Court Restructuring (Part 7):
Court Reporter Compensation Statutes**

In May, the Commission considered Memorandum 2020-15, which provides background information on trial court restructuring, the Commission's duty to update the codes to reflect trial court restructuring, the Commission's work on the court reporter compensation statutes in 2001-2002, and subsequent events relating to the court reporter compensation statutes.¹ As that memorandum explains, the area is complex and controversial.

Despite the Commission's extensive efforts to facilitate consensus in 2001-2002, the stakeholders could not agree on how to update the court reporter compensation statutes to reflect trial court restructuring. The Commission has been monitoring the area since then, waiting for the stakeholders to resolve the underlying policy issues before reattempting to remove obsolete statutory material on this topic.

As detailed in Memorandum 2020-15, the area remains difficult and contentious. Although recent developments in Santa Clara County suggested a possible improvement in relations between court reporters and court administrators,² the subsequent pandemic and resulting budget turmoil have likely undone any such progress.

Memorandum 2020-15 reintroduced this topic but did not present any decisions for the Commission to make. This is a follow-up memorandum, which discusses some possible approaches to this study. In considering the options, **Commissioners should bear the substance of Memorandum 2020-15 in mind and refer back to it when needed.** At the upcoming meeting, the Commission

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2020-15, pp. 18-19 (discussing AB 253 (Mark Stone, 2019)).

should consider the approaches discussed below, as well as any additional ideas that come to its attention, and determine how to proceed.

The following communication is attached for the Commission’s consideration:

Exhibit p.

- Michelle Castro, SEIU California State Council (5/18/20) 1

Unless otherwise indicated, all statutory references in this memorandum are to the Government Code.

POSSIBLE APPROACHES

Now that the Commission is familiar with the history and current status of the court reporter compensation statutes, there are two main options for it to consider:

- (1) Recommence work on the court reporter compensation statutes.
- (2) Continue to defer further work on the court reporter compensation statutes.

As discussed below, each approach has advantages and disadvantages, as well as some key sub-issues for consideration.

Recommence Work on the Court Reporter Compensation Statutes

It has been roughly twenty years since California’s dramatic set of trial court restructuring reforms: trial court unification, the enactment of the Lockyer-Eisenberg Trial Court Funding Act, and the enactment of the Trial Employment Protection and Governance Act (“TCEPGA”). The court reporter compensation statutes (many of which are reproduced in the attachment to Memorandum 2020-15) are replete with material made obsolete by those reforms.

For example, many of them refer to municipal courts, which no longer exist.³ Similarly, some of them still give counties (or county personnel) rights or responsibilities relating to trial court operations,⁴ but counties are no longer

3. See, e.g., Sections 69893.7, 69994, 69994.2, 69995, 70044.5, 70045.5, 70045.8, 70045.9, 70045.10, 70045.12, 70047.1, 70047.5, 70050.5, 70059.7, 70138.

4. See, e.g., Sections 68114.8 (“Official court reporters who terminate after the beginning of pay period one shall reimburse *the county* for vacation time used in excess of the pro rata amount earned while employed during the year.”), 69893.7 (“The compensation, including salary, retirement, vacations, and other benefits, of all Yolo County superior and municipal court officers and employees may be adjusted by the *board of supervisors*.”), 70128 (“The fees for reporting testimony and proceedings in contested cases and for reporting default or uncontested actions or

involved in trial court operations. Most importantly, most of the court reporter compensation statutes include detailed, generally county-specific rules governing salaries, benefits, and other aspects of court reporter compensation.⁵ Such statutes might have been overridden by the enactment of the TCEPGA, though that is subject to debate.⁶

Because the court reporter compensation statutes contain obsolete material, they are misleading and potentially confusing. It would be helpful to update them to reflect current conditions without further delay.

Institutional memories are also fading as individuals involved in the trial court restructuring reforms retire, switch employers, or forget relevant facts and circumstances. That is another reason for addressing the court reporter compensation statutes sooner rather than later.

If the Commission were to go forward with this study now, however, it would almost immediately need to assess the impact of the TCEPGA on the court reporter compensation statutes. In all likelihood, the key stakeholders (the Judicial Council, trial courts, court reporters, and court reporter groups and representatives) would adhere to their previous, conflicting positions on that point.⁷ There does not appear to be any judicial guidance (definitive or otherwise) on the matter, nor any likelihood of obtaining such guidance in the near future. In other words, the Commission may quickly find itself in much the same position it was in when it previously tried to address the court reporter compensation statutes, without success.

Assuming that proves to be the situation, the Commission could pursue one of the following alternatives:

- (a) **Draw a firm conclusion on the impact of the TCEPGA and propose statutory revisions based on that conclusion, despite the potential opposition and lack of definitive judicial guidance.** If it decides to draw such a conclusion, the Commission should take

proceedings shall be *paid to the county clerk and deposited in the county treasury.*”). (Emphasis in parenthetical quotes added.)

5. See, e.g., Sections 69948(h) (“In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars (\$75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.”), 69995 (describing many details regarding compensation of official and pro tempore reporters in Ventura County municipal and superior courts), 70045.75 (describing many details regarding compensation of official and pro tempore reporters in Nevada County).

6. See Memorandum 2020-15, pp. 7-8 & Exhibit pp. 2-7 (excerpt from Memorandum 2001-96).

7. See Memorandum 2020-15, p. 7; Memorandum 2001-96, pp. 3-8.

into account its previous comments on the matter,⁸ the staff's 2001 analysis,⁹ and any new input it receives. The Commission should also consider whether it would like any further staff research and analysis.

Because proceeding in this manner would entail controversy, it is likely to consume significant Commission resources and might not lead to the enactment of legislation. That is a risk inherent in any law reform effort, but it appears particularly acute here.

In 2001, the staff expressed reluctance to follow an approach similar to the one described above, "because the Legislature is looking to the Commission for what should be a noncontroversial cleanout of obsolete statutes."¹⁰

- (b) **Try to facilitate a compromise among the stakeholders, such as re-examining the base compensation concept that the Commission proposed in 2001.**¹¹ The employment terms in the court reporter compensation statutes were established long ago and generally seem inadequate by today's standards (at least with respect to salaries, as opposed to benefits). For example, Section 69948(r) says that in Humboldt County, "the fee for reporting testimony and proceedings in contested cases is seventy-five dollars (\$75) per day, or any fractional part thereof." Perhaps the Judicial Council might now be receptive to the base compensation concept previously proposed or some variant of it, making it possible to reach some consensus on how to update the court reporter compensation statutes.

Attempting to facilitate a compromise along those lines (or some alternative approach) would be a deviation from the pure clean-up role the Commission has generally adhered to in its work on trial court restructuring pursuant to Section 71674.¹² There is of course precedent for such action in this context, as well as elsewhere.¹³ For the most part, however, the Commission has steered clear of policy-making with respect to the trial court restructuring reforms, because the Legislature did not expressly give it such authority.

As in the past, trying to facilitate a stakeholder compromise is likely to consume significant Commission resources and might not lead to the enactment of legislation. Prospects seemed better at the beginning of this year, when court budgets appeared healthy and the staff first recommenced work on this study, than they do now

8. See Memorandum 2020-15, pp. 10-11 (quoting from *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 31 Cal. L. Revision Comm'n Reports 1, 14-15 (2002)).

9. See Memorandum 2020-15, Exhibit pp. 2-7 (excerpt from Memorandum 2001-96).

10. Memorandum 2001-96, p. 10.

11. See Memorandum 2020-15, pp. 6-7. Proposed Section 69947 would have been the key provision implementing the base compensation concept. See *id.* at Exhibit p. 1.

12. See Tentative Recommendation on *Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts* (July 2020), p. 4.

13. See Memorandum 2020-14, p. 13.

that the pandemic has upended court procedures and state finances.

Continue to Defer Further Work on the Court Reporter Compensation Statutes

Instead of reexamining the court reporter compensation statutes now, the Commission could continue to defer work on those statutes, keep monitoring the situation, and await a better opportunity to revise those statutes to reflect trial court restructuring. In the interim, the Commission could complete other aspects of its assignment on trial court restructuring and/or turn to other projects.

If the Commission decides to follow this approach, it should consider what conditions would make it appropriate to reactivate this study in the future. In other words, what trigger would the Commission be waiting for? Possibilities include:

- Alleviation of the current COVID-19 crisis, particularly the tight court budgets and the uncertainties regarding the manner of conducting court proceedings.
- Definitive judicial guidance regarding the impact of the TCEPGA on the court reporter compensation statutes.
- Stakeholder resolution of the key compensation policies for court reporting, which eliminates any ambiguity about the proper treatment of the pre-TCEPGA court reporter compensation statutes.
- Some combination of the above.
- Some other indication that recommencing this study would be productive.

The Commission would not necessarily have to select a trigger in advance; it could determine that much later if it prefers.

Whatever the trigger, the Commission's annual review of new topics and priorities may be a convenient mechanism for assessing when to recommence work on the court reporter compensation statutes. In particular, the Commission could ask the staff to specifically address that point in each year's new topics memorandum going forward. Alternatively, it could request less frequent updates, or just leave it to the staff to decide when to prepare a memorandum that raises the question of recommencing the study.

If the Commission decides to defer further work on this study, it should also consider the best means of memorializing the work it has done thus far. Are Memorandum 2020-15 and this memorandum sufficient? Would there be any

advantage to preparing a formal progress report for the Legislature? The staff does not think so, but perhaps we are overlooking something.

OUTREACH AND COMMENTS

To obtain input on the above approaches and build a robust, up-to-date mailing list if this study goes forward, the staff made special efforts to alert the following organizations to the reexamination of this topic:

- California Court Reporters Association (“CCRA”).
- Service Employees International Union (“SEIU”).
- American Federation of State, County, and Municipal Employees (“AFSCME”).
- Alameda County Official Court Reporters Association.
- Los Angeles County Court Reporters Association (“LACCRA”).
- Judicial Council.
- Los Angeles County Superior Court.

In addition, the staff has been distributing the staff memoranda to its extensive trial court restructuring mailing list as usual and posting those memoranda to its website. We also requested that the Judicial Council publish a notice about this study in its Court News Update (“CNU”), which the Council regularly distributes to all 58 trial courts.

The SEIU California State Council, which represents court reporters in 37 counties,¹⁴ has already provided some input. In response to the background memorandum reintroducing this study,¹⁵ its Director of Public Sector Government Relations (Michelle Castro) commented:

I have been involved with this whole issue since 1997. It was interesting to read the memo and relive some of the history. Unfortunately, *very little has changed since the Commission started its work on the court reporter statutes*. Relationships have improved on the state level, but not much has changed between individual trial courts and court reporters. I noticed your reference to AB 253 from last year and whether it signaled an improvement in relationships. It certainly reflects the relationship in Santa Clara. But, no other courts were included in that pilot project because there were no others with similar relationships. Also, the bill specifically prohibited remote reporting in other counties because of a lack of trust. As noted in the memo, anxieties are heightened as a result of

14. Exhibit p. 1.

15. Memorandum 2020-15.

the Covid 19 crisis and impending budget cuts. Unfortunately, our experience has shown us that many courts view reporters in civil and many family law proceedings as optional. This remains the same. *Prior to the Covid 19 crisis, it MIGHT have been a good time to think about a workgroup to look at these reporter statutes, but given the new environment — all of the old threats and anxieties have re-emerged. Given this, the SEIU ... would object to a workgroup to consider these statutes.* Our attention, as well as that of our membership will be focused on the state budget, its impacts on local trial courts and protecting the jobs of court reporters and we will need every tool possible to do that.¹⁶

In short, SEIU firmly requests that the Commission continue to defer work on the court reporter compensation statutes.

SEIU's view is important and its concerns about the impact of the pandemic are understandable. We are grateful for its prompt response to the question of how to proceed.

Additional comments on the matters discussed in this memorandum would be helpful. Written comments can be in any format and should be emailed to bgaal@clrc.ca.gov. Stakeholders and other interested persons are also welcome to share their views at the Commission's upcoming meeting, which will be conducted as a Zoom webinar. The agenda and login information are available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

DECISIONS TO MAKE

After considering this memorandum, SEIU's comment, and any other comments or information it receives, **the Commission will need to decide whether it makes sense to proceed with this study at the present time.**

If it decides to go forward, **then the Commission might also want to provide guidance on the following points:**

- Whether the staff should provide a fresh analysis of the TCEPGA's impact on the court reporter compensation statutes (supplementing the analysis its former Executive Director provided in 2001 and the additional information included in the memorandum reintroducing this study).
- Whether it is leaning towards (1) drawing a firm conclusion on the impact of the TCEPGA and proposing statutory revisions based on that conclusion, or (2) trying to facilitate a compromise among the stakeholders (such as re-examining the base compensation concept

16. Exhibit p. 1 (emphasis added).

that the Commission proposed in 2001). It might be too early to offer such guidance, but any insights would be helpful to the staff in planning for the study.

If instead the Commission decides to continue to defer work on the court reporter compensation statutes, **then it might also want to provide guidance on the following points:**

- The circumstances that would make it appropriate to reactivate this study in the future.
- How often and in what manner the Commission would like to reassess when to reactivate this study.
- Whether to do anything further to memorialize the work that the Commission has done so far.

Rather than making any recommendations at this time, the staff will wait until interested persons have had an opportunity to comment on the possibilities discussed above. **We encourage those familiar with the situation to share their views at or before the upcoming meeting.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM MICHELLE CASTRO, SEIU
CALIFORNIA STATE COUNCIL (5/18/20)**

**Re: CLRC Study of Trial Court Restructuring & Court Reporter Compensation
Statutes**

Hi Barbara —

I was forwarded this email from the SEIU represented court reporters in CCRA, as well as LACCRA. I have been involved with this whole issue since 1997. It was interesting to read the memo and relive some of the history. Unfortunately, very little has changed since the Commission started its work on the court reporter statutes. Relationships have improved on the state level, but not much has changed between individual trial courts and court reporters. I noticed your reference to AB 253 from last year and whether it signaled an improvement in relationships. It certainly reflects the relationship in Santa Clara. But, no other courts were included in that pilot project because there were no others with similar relationships. Also, the bill specifically prohibited remote reporting in other counties because of a lack of trust. As noted in the memo, anxieties are heightened as a result of the Covid 19 crisis and impending budget cuts. Unfortunately, our experience has shown us that many courts view reporters in civil and many family law proceedings as optional. This remains the same. Prior to the Covid 19 crisis, it MIGHT have been a good time to think about a workgroup to look at these reporter statutes, but given the new environment — all of the old threats and anxieties have re-emerged. Given this, the SEIU which represents court reporters in 37 counties would object to a workgroup to consider these statutes. Our attention, as well as that of our membership will be focused on the state budget, its impacts on local trial courts and protecting the jobs of court reporters and we will need every tool possible to do that.

I hope you will consider these very brief comments in your considerations.

Michelle

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